



# AFP

AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2019/229

8 February 2019

Sam

By email: [foi+request-4920-9cf1f312@righttoknow.org.au](mailto:foi+request-4920-9cf1f312@righttoknow.org.au)

Dear Sam,

## Freedom of Information request

I refer to your application dated 28 October 2018, under the *Freedom of Information Act 1982* (the Act) seeking the following:

*'I wish to request any and all information, rules, instructions, regulations or similar held or used by the AFP, or anyone acting on their behalf, which relates to:*

*a) the identification or classification of Lawyer and Law Practice or any other person or group of people, for which a warrant (as prescribed by Division 4C of the Telecommunications (Interception and Access) Act 1979) would be required; or*

*b) the identification or classification any other person or group of people for which the rules, instructions, regulations or similar are different than the rules, instructions, regulations or similar of the general Australian populace.*

*I also wish to request any rules, instructions, regulations or similar which dictate the manner in which an officer of the AFP may access metadata. This part of the request is not limited to requests pertaining to people belonging to one of the groups above.*

*If any of the above rules, instructions or otherwise exist, I would believe they would be known to any AFP officers who might have access to metadata (or can grant said access), so I expect this search to be relatively easy to conduct. With that in mind, I request that any fees in relation to this request be waived, as the AFP has recently announced that an investigator with the AFP has recently sought and acquired the call records of a journalist without a warrant.*

*The AFP are hindered in their ability to perform their work as a result of the loss of trust this has caused in the community, and by showing good faith the AFP may be able to regain some of that trust.'*

Attached at Annexure A to this letter is my decision and statement of reasons for that decision. A "Schedule of Documents" identified as falling into the scope of your request is at Annexure B.

#### **Information Publication Scheme (IPS)**

As notified to you on 31 October 2018 Part 2 of the Act established an Information Publication Scheme (IPS) for Australian Government agencies subject to the Act. The IPS requires the AFP to publish a broad range of information on this website. In accordance with section 11C of the Act, an agency is required to publish information on their website following the notification of a decision in respect of a freedom of information request.

In respect of your request, it has been decided to publish the documents in part. Publication of the documents and any relevant documents will be made on the AFP website at <https://www.afp.gov.au/about-us/information-publication-scheme#routinely-requested-information> in accordance with timeframes stipulated in section 11C of the Act.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Helen Drew', with a stylized flourish at the end.

Helen Drew  
Coordinator  
Freedom of Information Team  
Chief Counsel Portfolio

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY  
SAM**

I, Helen Drew, Coordinator, Freedom of Information Team, am an officer authorised under section 23 of the Act to make decisions in relation to the Australian Federal Police.

What follows is my decision and reasons for the decision in relation to your application.

**BACKGROUND**

On 28 October 2019, this office received your letter/application in which you requested:

*I wish to request any and all information, rules, instructions, regulations or similar held or used by the AFP, or anyone acting on their behalf, which relates to:*

*a) the identification or classification of Lawyer and Law Practice or any other person or group of people, for which a warrant (as prescribed by Division 4C of the Telecommunications (Interception and Access) Act 1979) would be required; or*

*b) the identification or classification any other person or group of people for which the rules, instructions, regulations or similar are different than the rules, instructions, regulations or similar of the general Australian populace.*

*I also wish to request any rules, instructions, regulations or similar which dictate the manner in which an officer of the AFP may access metadata. This part of the request is not limited to requests pertaining to people belonging to one of the groups above.*

*If any of the above rules, instructions or otherwise exist, I would believe they would be known to any AFP officers who might have access to metadata (or can grant said access), so I expect this search to be relatively easy to conduct. With that in mind, I request that any fees in relation to this request be waived, as the AFP has recently announced that an investigator with the AFP has recently sought and acquired the call records of a journalist without a warrant.*

*The AFP are hindered in their ability to perform their work as a result of the loss of trust this has caused in the community, and by showing good faith the AFP may be able to regain some of that trust.'*

On 13 December 2019, a further extension of time was granted by the Office of the Australian Information Commissioner (OAIC) pursuant to section 15AB/15AC of the Act to notify you of a decision by 11 January 2019.

I note the statutory timeframe has expired and apologise for the delay and any inconvenience this may have caused.

## SEARCHES

In relation to this request, a search was undertaken by:

- a) The Support Capability portfolio; and
- b) a search of all records held by AFP case officers with responsibility for matters relating to the documents to which you sought access.

## WAIVER OF CHARGES

Given that the request has exceeded all statutory timeframes as outlined at Section 15 of the Act, the AFP is not able to impose any fees or charges as outlined at Regulation 5(2)&(3) of the *Freedom of Information (Charges) Regulations 1982*.

## DECISION

I have identified 20 documents relevant to your request. A schedule of each document and details of my decision in relation to each document is at Annexure B.

I have decided that some of the documents itemised at Annexure B are released to you in their entirety. Some of the documents that relate to your request are released with deletions pursuant to subsection/s 7(1), 22(1)(a)(ii), 37(2)(b), 47E(d) and 47G of the Act. Some of the documents that relate to your request are exempt in full, pursuant to subsection 22(1)(a)(ii) and 47E(d) of the Act.

My reasons for this decision are set out below.

## REASONS FOR DECISION

### ***Folios to which subsection 7(1) applies:***

Subsection 7(1) of the Act provides that:

*“(1) The bodies specified in Division 1 of Part 1 of Schedule 2, and a person holding and performing the duties of an office specified in that Division, are to be deemed not to be prescribed authorities for the purposes of this Act.*

The documents or parts of documents identified in the schedule as exempt under subsection 7(1) of the Act contain material which was provided by an agency which is determined to be exempt from the operations of the Act. I have determined that the information is exempt from the operations of the Act as it is information which was provided by or relates to an agency as listed in schedule 2 of the Act.



I find that release of the documents or parts of the documents would be an unreasonable disclosure under subsection 7(1) of the Act.

***Folios to which subsection 22(1)(a)(ii) applies:***

Subsection 22(1)(a)(ii) of the Act provides that:

- “(1) Where:  
(a) an agency or Minister decides:  
(ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request;”

The documents or parts of documents identified in the Schedule under this section of the Act contain information which is considered irrelevant to the request. I have determined that information contained in some of the folios is irrelevant because it does not come within the scope of your application and thus falls outside the ambit of your request. This information refers to other issues which are not mentioned in your FOI application or is irrelevant to your application as you have not objected to exclude it from the scope of your request. Specifically, in accordance with our acknowledgement letter dated 31 October 2019 the names of AFP members, other than the Senior Executive, and direct telephone numbers, signatures and mobile telephone numbers of AFP members.

I therefore have found that those documents or parts of the documents would be reasonably be regarded as irrelevant to the request under subsection 22(1)(a)(ii) of the Act.

***Folios to which subsection 37(2)(b) applies:***

Subsection 37(2)(b) of the Act provides that:

- “(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:  
...  
(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;”

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information that would disclose methods and procedures used by the AFP in investigations of breaches of the law that are not commonplace or well-known to the public.

If the information in the documents were known it could reasonably be expected to give criminals an insight which may be used to obtain an advantage through the use of unlawful behaviour to further their cause. In particular, I believe disclosure of this information could reasonably be expected to lead to the modification of behaviour by individuals to avoid detection in the future.

Some of the methods and procedures referred to in the documents may be the subject of speculation, but disclosure of this information would confirm the methods and resources

available to law enforcement officers and the methods upon which the AFP relies in the investigation of criminal activity.

I find that the documents or parts of the documents would be exempt under this subsection 37(2)(b) of the Act.

***Folios to which subsection 47E(d) applies:***

Subsection 47E(d) of the Act provides that:

*"A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- ...
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency;..."*

The documents or parts of documents identified in the schedule as exempt under this section of the Act contain information, the release of which, would have a substantial adverse effect on the conduct of AFP operations, specifically its investigative functions as it reveals how information is obtained and actioned for the purposes of investigating breaches of the law.

I have considered the public interest factors both in favour and against disclosure of the information in these folios.

In relation to the factors favouring disclosure, I believe the following are relevant:

- (a) the general public interest in access to documents as expressed in sections 3 and 11 of the Act; and
- (b) the public interest in people being able to scrutinise the operations of a government agency and in promoting governmental accountability and transparency.

In relation to the factors against disclosure, I believe that the following are relevant:

- (c) the need for the agency to maintain the confidentiality with regard to the subject matter and the circumstances in which the information was obtained and collated;
- (d) that if information concerning the operation was revealed, it may have a substantial adverse effect on the conduct of similar operations in the future; and
- (e) if such information was disclosed, it may prejudice security, law enforcement and public safety.

While there is a public interest in providing access to documents held by the AFP, I have given greater weight to factors (c), (d) and (e) above and conclude that on balance, disclosure is not in the public interest, given the need to ensure the effectiveness current AFP procedures.

***Folios to which section 47G applies:***

Section 47G of the Act provides that:

- "(1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs*

*of an organisation or undertaking, in a case in which the disclosure of the information:*

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
- (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency."*

The documents or parts of documents identified in the Schedule as exempt under this section of the Act contain information which relates to the business affairs of a private organisation. The information was obtained by the AFP directly from the private organisation during the course of an investigation. It is considered that this private organisation would be unreasonably affected by the disclosure of the information as it directly relates to their business and commercial affairs. It is also considered that the AFP would be unreasonably affected by the disclosure of the information as it would jeopardise the future supply of information from that private organisation.

In relation to the factors favouring disclosure, I believe the following are relevant:

- (a) the general public interest in access to documents as expressed in sections 3 and 11 of the Act; and
- (b) the public interest in people being able to scrutinise the operations of a government agency and in promoting governmental accountability and transparency.

In relation to the factors against disclosure, I believe that the following are relevant:

- (c) disclosure would prejudice the future supply of information to the AFP for the purposes of the administration of a law and in particular for the purposes of an investigation. Disclosure of the information would compromise the relationship between the AFP and that private organisation which in turn would prejudice the AFP's ability to effectively carry out its operations as a policing agency.
- (d) disclosure would also deter the private organisation from assisting the AFP in any future investigations as the expectation of providing that information confidentially would be compromised.

I have considered the public interest factors both in favour and against disclosure and in my view, in relation to these documents, the factors at (c) and (d) against disclosure outweigh the factors in favour of disclosure. I find that release of the documents or parts of the documents would be an unreasonable disclosure under section 47G of the Act.

#### **EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED**

In reaching my decision, I have relied on the following documentary evidence:

- ❖ the scope of your application;
- ❖ the contents of the documents listed in the attached schedule;



- ❖ advice from AFP officers with responsibility for matters relating to the documents to which you sought access;
- ❖ *Freedom of Information Act 1982*; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

**\*\* YOU SHOULD READ THIS GENERAL ADVICE IN CONJUNCTION WITH THE LEGISLATIVE REQUIREMENTS OF THE FREEDOM OF INFORMATION ACT 1982.**

## **REVIEW AND COMPLAINT RIGHTS**

If you are dissatisfied with a Freedom of Information decision made by the Australian Federal Police, you can apply for an internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking an IC review.

You do not need to seek a review by either the AFP or the IC should you wish to complain about the AFP's actions in processing your request.

### ***REVIEW RIGHTS under Part VI of the Act***

#### ***Internal Review by the AFP***

Section 53A of the Act gives you the right to apply for an internal review in writing to the Australian Federal Police (AFP) within 30 days of being notified of a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for the internal review if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the internal review submission must be made within 30 days. Applications for a review of the decision should be addressed to:

Freedom of Information  
Australian Federal Police  
GPO Box 401  
Canberra ACT 2601

### ***REVIEW RIGHTS under Part VII of the Act***

#### ***Review by the Information Commissioner (IC)***

Alternatively, Section 54L of the Act gives you the right to apply directly to the IC or following an internal review by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also help if you set out the reasons for review in your application.

Section 54S of the Act provides for the timeframes for an IC review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

Applications for a review of the decision should be addressed to:



Office of the Australian Information Commissioner  
GPO Box 5128  
Sydney NSW 2001

Further, the OAIC encourages parties to an IC review to resolve their dispute informally, and encourages agencies to consider possible compromises or alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

Information about the IC review process can be found in Part 10 of the Guidelines which are available on our website at <http://www.oaic.gov.au/publications/guidelines.html>.

***RIGHT TO COMPLAIN under Part VIIB of the Act***

Section 70 of the Act provides that a person may complain to the IC about action taken by the Australian Federal Police in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made.

The IC may be contacted on 1300 363 992. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.